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OFFICE OF PETITIONS

In re Application of :
Keith Slavin : DECISION ON
Application No. 10/002,461 : PETITION
Filed: November 1, 2001 :
Atty Docket No. DB000955-000 :

This is a decision on the PETITION UNDER RULE 183 filed April 6, 2007, requesting waiver of § 1.131's requirement that all of the inventors sign the declaration of prior inventorship.

The petition under 37 CFR 1.183 is GRANTED.

The above-identified application was filed on November 1, 2001, with a 37 CFR 1.63 declaration signed by sole inventor Slavin. On October 3, 2006, a final Office action was mailed in this application. This Office action set a three (3) month shortened statutory period for reply, with extensions of time obtainable under § 1.136(a).

On April 6, 2007, petitioner responded with *inter alia* the instant petition, made timely by virtue of a certificate of mailing dated April 3, 2007 and an accompanying petition and fee for extension of time for response within the third month. This response after final was also made proper by the accompanying request for continued examination (RCE) and RCE fee.

The petition includes a DECLARATION UNDER RULE 132 by Russell Slifer on behalf of the assignee, but no DECLARATION UNDER RULE 132 by sole inventor Slavin. The petition includes a DECLARATION UNDER RULE 132 by Edward Pencoske, which is really a

declaration of facts to show that inventor Slavin refuses to sign the § 1.131 declaration.

37 CFR 1.131 states, in pertinent part:

When any claim of an application or a patent under reexamination is rejected, the inventor of the subject matter of the rejected claim, the owner of the patent under reexamination, or the party qualified under §§ 1.42, 1.43, or 1.47, may submit an appropriate oath or declaration to establish invention of the subject matter of the rejected claim prior to the effective date of the reference or activity on which the rejection is based.

In addition, the Manual of Patent Examining Procedure states that "an application or declaration by less than all named inventors of an application is accepted where it is shown that less than all named inventors of an application invented the subject matter of the claim or claims under rejection."

Here, there has not been a party qualified under 37 CFR 1.42, 1.43, or 1.47. In addition, applicant does not contend that less than all of the named inventors of the application invented the subject matter of the claims under rejection. Accordingly, the proper parties to sign the 37 CFR 1.131 declaration include all of the inventors.

In order for a petition under 37 CFR 1.183 to be granted to waive this requirement that sole inventor Slavin sign the § 1.131 declaration, petitioner must demonstrate that this is an extraordinary situation where justice requires waiver of the rules.

On instant petition, petitioner has set forth the steps taken to obtain inventor Slavin's signature on the § 1.131 declaration. Petitioner has shown that inventor Slavin has refused to sign the § 1.131 declaration. The declaration presented is signed by Russell Slifer. The record includes a showing that the application is assigned to Micron Technology, Inc., and that this assignment is recorded in the Office at Reel/Frame, 012356/0202. The petition includes the resolution of the Board of Directors of assignee Micron that Russell Slifer is authorized to sign on behalf of assignee Micron. Under the circumstances, it is concluded that petitioner has demonstrated


that this is an extraordinary situation, warranting waiver of the rules.

The petition is granted to the extent that the 37 CFR 1.131 declaration may be entered, despite the fact that its requirement that all of the inventors sign the declaration has not been satisfied. This is not a decision on the merits of the 1.131 declaration.

Receipt of the \$400 petition fee is acknowledged.

The application is being forwarded to Technology Center 2189 for consideration by the examiner on the merits of the reply and the 37 CFR 1.131 declaration, filed April 6, 2007.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-3219.



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